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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,098	03/26/2004	Eduard Kunschir	12684.9USW1	8190
23552	7590	05/16/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				BUNIN, ANDREW M
ART UNIT		PAPER NUMBER		
3743				

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/810,098	KUNSCHIR, EDUARD
	<b>Examiner</b>	<b>Art Unit</b>
	Andrew M. Bунин	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Priority*

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Europe on 10/18/2001. It is noted, however, that applicant has not filed a certified copy of the 01124294.8 application as required by 35 U.S.C. 119(b).

### *Specification*

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).

- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

It is suggested that the appropriate heading be placed throughout specification as listed above.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being unpatentable by Robertson et al. (US 5,487,378).

Robertson et al. discloses a device for inhalation comprising an oscillatable membrane 50 for nebulising a liquid. A membrane can be defined as a "thin sheet of natural or synthetic material that is permeable to substances in solution" ([www.dictionary.com](http://www.dictionary.com)). Therefore, the nozzle array as shown in figure 5a and 5b can be considered a membrane. In addition, Robertson et al. states the common use of a membrane, "housing comprising a perforate membrane with defines a front wall of the chamber and which has a rear face contacted by liquid in use" (column 2, lines 34-35).

Robertson et al. continues to disclose an oscillation-generating device 84 having at least one connecting means for supplying an oscillation control signal 80 as shown in figure 6a. This signal causes the membrane 50 to oscillate when the oscillation control

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signal is supplied such that a liquid 16 disposed on one side of said membrane is nebulised through the membrane 50 and is present on the other side of said membrane 50 as an aerosol as shown in figure 4a. Robertson et al. states that an "apparatus further comprising vibrating means connected to the housing and operable to vibrate the perforate membrane to dispense droplets of liquid through the perforate membrane" (column 2, 36-40).

The device of Robertson et al. also discloses a control means 206 from which an oscillation control signal can be supplied to with at least one connecting means to the oscillation-generating device 220 so that said oscillation-generating device 220 causes the membrane 50 to oscillate as shown in figure 11. In figure 10, Robertson et al. uses a function block diagram to further illustrate the electronic metered dose aerosol delivery system. Figure 10 includes a control means 162 that has a further control signal of the control means 162 supplied to the oscillation generating device 170 causing the membrane 50 to oscillate in the audible frequency range so as to emit an audible signal 160 for a user.

Robertson et al. also discloses a device for inhalation therapy with a further control signal supplied to the oscillation-generating device 170 via the same connecting means as the oscillation control signal 174 as shown in figure 10.

As for claim 3, the oscillation-generating device comprises an electromechanical transducer unit 56 in particular a piezoelectric material. Robertson et al. continues to disclose a support unit 52 to which the electromechanical transducer unit and the membrane 50 are attached. Robertson et al. states, "a piezo-electric transducer is

secured to the vibrating member for inducing a rearward displacement...to discharge a small quantity of liquid through the nozzle opening" (column 2, lines 10-13). Robertson et al. discloses a device for inhalation including a generator unit 92 that generates a further control signal, which is supplied to the oscillation-generating device 84, via at least one connecting means as shown in figure 6a.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertson et al. Robertson et al. has discloses the claimed invention except for the generator unit 92 being integrated in the control means 206 and the energy supply means 202 for the inhalation device being integrated in the control means 206. It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the generator unit and energy supply means in the control means, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involved only routine skill in the art. *Howard v. Detroit Stove Works*, 150 US 164 (1893)

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 6402046, US 5261601, US 6152130, and US 4300131

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Bunin whose telephone number is (571)272-4801. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571)272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*AMB*  
AMB  
4/29/05

*JH*  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700